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Current Topics.

Leader of the Divorce Bar.

A WELL-DESERVED honour has been conferred upon Mr. ROBERT FREDERIC BAYFORD, K.C., the Leader of the Divorce Bar, by his appointment to be Recorder of Portsmouth, *vice* Mr. DU PARCQ, K.C., the new Recorder of Bristol. Of the three regular "silks" in the Probate and Divorce Division two are now Recorders (the other being Mr. COTES-PREEDY, K.C., Recorder of Smethwick). As Recorder of an important naval seaport, Mr. BAYFORD will have a great deal of responsible judicial work to do at the borough sessions, and he is well qualified for such duties, not only by his exceptionally judicial and deliberate temperament, but also by his experience as Commissioner of Assizes in matrimonial causes on the Western Circuit. The son of the late Mr. M. A. BAYFORD, K.C., also well known in his day in the Probate and Divorce Division. Mr. BAYFORD is an old Etonian and a Cambridge rowing blue (1893). In his youth he used to think nothing of walking to Brighton in a day. Now at his residential chambers in Crown Office-row he is the possessor of the only private lift in the Temple, which was installed for his predecessor in those chambers, the late Mr. RAWLINSON, K.C.

"My Friend is too Technical."

THE WORD "technical" has attained a peculiar significance in the legal profession. It has almost become synonymous with bad form; a term of reproach damning with its faint praise. The umpire who will give a good bat out l.b.w. without a tremor, the engineer working to incredible fractions of an inch, the surgeon insisting on making certain that he has removed all his instruments at the conclusion of an operation, all these may go their way *sans peur et sans reproche*. But the advocate who is ever ready to protest against the first laxity he detects, who is always confronting his harassed opponents with unsuspected cases and unheard-of *dicta* soon becomes as unpopular as TOM BROWN'S friend ARTHUR, who did Latin prep. because he loved it. In some cases, the criticism implied in the word is just. Points without substance waste time and take the attention of the court from the real issues. Wasting time and distracting attention are both bad faults; but they are more often committed by those who are not really technical at all, those whom vanity is for ever forcing to their feet and who imagine that unless they are up and talking they will pass unnoticed. Often an opponent is accused of technicality simply because he has a better knowledge of the law and is resolute to put it to good use. Every submission he advances is technical, and this is not to be wondered at, because very much of the law is technical. A particular case may be highly technical, but ought it for that reason to be avoided as we avoid awkward topics of conversation in our daily life? It may very well be that a dozen or more judges, to say nothing of advocates, spent a good deal of time and learning in worrying it out. If only in courtesy to them, to say nothing of the position case-law is recognised as occupying in our legal system, the disliked decision ought to be brought to notice. Courts owe more to the "technical" lawyer than they are generally disposed to admit. How many times has he not with becoming humility reminded tribunals of decisions of which they had never heard? How often has he not construed statutes which until his masterly hand tore aside the veil had been meaningless? And often the moment he walks into court, he changes a slovenly happy-go-lucky atmosphere into one of alertness. No one wants to risk a blunder when so discerning a critic is looking on.

Waiver of Diplomatic Privilege.

MAY DIPLOMATIC privilege be waived by the person entitled to claim the same? The answer is in the affirmative according to the ruling of the Lord Chief Justice in *Dickinson* v. *Del Solar* (*Mobile and General Insurance Company Ltd., Third parties*), reported in *The Times*, 1st August. In that case the defendant, acting on the instructions of his superior, who was the Peruvian Minister in this country, waived the diplomatic privilege to which he was entitled, and submitted to our jurisdiction by entering an appearance to an action in which damages were awarded against him for negligently injuring the plaintiff. The third parties with whom the defendant was insured had taken up the line that the assured had acted to the detriment of the company's interests within the terms of the policy by failing to exercise the privilege which would have rendered him immune from proceedings. It was held, however, that the judgment against the defendant created a legal liability against which the insurance company had agreed to indemnify him. On the point of waiver it is surprising that there should have been any argument in view of the authorities. In *Suarez* v. *Suarez* [1918] 1 Ch. 176, a minister of a foreign state in England was sued for an account as administrator to an intestate's estate: he waived his diplomatic privilege and instructed his solicitors to accept service of an originating summons in the proceedings. It was held by the Court of Appeal, following *Taylor* v. *Best* (1854), 14 C.B. 487, that an ambassador or public minister can, with the consent of his government, effectually waive his privilege and lose the immunity conferred thereby. The same rule was laid down by the House of Lords in *Duff Development Co. Ltd.* v. *Kelantan Government* [1924] A.C. 797. There still remains a doubt, however, as to whether execution can issue on a judgment obtained against a person who has waived his diplomatic privilege. This question was discussed, but did not arise for decision in the last-mentioned case, *vide* LORD SUMNER, at p. 830 of his judgment.

The Appearance of Justice.

THE LORD CHIEF JUSTICE in *R.* v. *Sussex JJ., ex parte McCarthy* [1924] 1 K.B. 256; 68 SOL. J. 253, gave utterance to a profound truth too often overlooked. He said, "There is no doubt that it is not merely of some importance, but of fundamental importance, that justice should not only be done, but be manifestly and undoubtedly seem to be done"; and he, and other judges, have frequently emphasised this importance. There are two types of mind which approach questions of bias or suspicion of bias from entirely different standpoints. One set of people will act if not actually forbidden by law; the others consider that the mere fact that a question is raised should restrain them from acting. The latter, while, perhaps, going too far on occasion, are undoubtedly on sounder ground. It is indeed difficult to understand the mind which, uninfluenced by expectation of personal advantage, will nevertheless insist on adjudicating or taking a judicial part in proceedings where their fellows cannot unfairly be disposed to regard them as being unduly biased. The same considerations arise upon applications for change of venue, which ought to be regarded benevolently. It is pleasing to see an American court changing the venue on the ground that sixteen persons charged with conspiracy to murder a chief of police could hardly get a trial in the normal course which would have "every appearance of fairness," though it might in fact be a fair trial. This decision shows a thorough grasp of the principles upon which Anglo-American jurisprudence has been laboriously constructed by generations of lawyers intent on producing confidence in the administration of justice.

Total Incapacity of Workman.

A TYPICALLY difficult question of workmen's compensation arose in *Tannoch (Pauper)* v. *Brownieside Coal Company Limited, The Times*, 12th July. A miner was injured in the course of his employment, whereby he suffered the complete and permanent loss of the sight of one eye. He was willing to resume work and had taken all reasonable steps to obtain employment as a miner or in the allied occupation of a quarryman, but had failed to secure employment. He had also unsuccessfully endeavoured to obtain other employment. In this connexion it is provided by the Workmen's Compensation Act, 1925, s. 9 (1) that "If a workman who has so far recovered from the injury as to be fit for employment of a certain kind proves to the satisfaction of the judge of the county court that he has taken all reasonable steps to obtain, and has failed to obtain, such employment, and that his failure to obtain such employment is a consequence, wholly or mainly, of the injury, the judge shall order that his incapacity shall, for the purposes of this Act, continue to be treated as total incapacity for such period . . . as may be provided by the order . . ." The question at once arises, Is a person's former employment excluded by the words in the above section "employment of a certain kind"? Suppose the injured person recovers so as to be able to do some other work than that from which he has been deterred by the accident, what is the criterion to be applied in determining compensation? The House of Lords held that the words "employment of a certain kind" are wide enough to cover work even of the old kind, and that therefore in the present case the arbitrator was correct in awarding compensation in respect of total incapacity until further order.

The Road Accident and the Doctor's Unpaid Fee.

A PARAGRAPH in an evening newspaper recounts the unfortunate experience, as told by himself, of a doctor who lives by a main road. This road is one carrying much traffic, and accidents are numerous. Victims of them have been taken to his surgery at all hours of the day and night, but, although he has supplied splints, bandages, and professional attention, and "the place has been turned into a shambles," never once in ten years has he received a fee or had a word of thanks. Payment for medical services rendered is, no doubt, based on contract, into which a man unconscious from concussion of the brain or other hurt cannot enter. Also, no doctor worthy of his profession would delay his services until he had struck a bargain with the badly injured victim of an accident, or secured payment of the fee. Still, one would suppose that at least a proportion of those seeking aid were suffering from minor injuries, and not incapacitated from some discussion of the fee, and a few words of thanks. Indeed, the less the patient intended to pay the former, the more profuse he would probably be of the latter. Apart from the patient's inability to pay, however, whether temporary or otherwise, it is quite obvious that the doctor who saves health and perhaps life in an emergency should not be at a loss in doing so (the case of his hospital is different: its machinery ensures that he shall not be called upon to attend patients for nothing who can afford to pay him). The proper remedy would be that the doctor, on stating the facts, possibly on a statutory declaration, should be able to recover the fee in such circumstances from a public fund, the trustees or guardians of which should have their remedy against the persons, if any, responsible for the accident. In applying for his fee, the doctor would, of course, fill in a form giving all material particulars of the accident, and there would be a burden on him to obtain all information reasonably within his power as to the circumstances, including, of course, the number of any car involved in it. Possibly such a fund might be provided by a small extra levy on motorists payable when they renewed their licences, and it might even be right to make each licensed driver indemnify the fund against accidents in which his car was involved, although not arising from his own fault. In such case he would, of course, have a remedy over against the person responsible for the accident. In whatever way this might be arranged, the burden should not, as it now does, fall on the medical profession.

A Partially Invalid Will.

THE CASE of *Wilkinson* v. *Gardner*, reported shortly in *The Times* of 20th July, may be regarded as a puzzling one. It was a probate action, and the plaintiff, a Mr. WILKINSON, propounded a will of which he was executor and residuary legatee. He was a solicitor at the time the will was made (though struck off the rolls later on), and had received instructions to draw it. Knowing of the jealousy with which the courts regard a will drawn by a solicitor in his own favour (as laid down, for example, in *Raworth* v. *Marriott* (1833), 1 My. & K. 643), the plaintiff arranged that the testatrix should execute it under the auspices of another firm, with a special testimonium, something after the style of that to a married woman's acknowledgment. There were various charitable and other legacies, and one of £500 to be distributed at the plaintiff's absolute discretion between certain cousins of the testatrix. The will was challenged by certain of the next-of-kin, on the grounds of the ignorance of the testatrix of its contents, and the undue influence of the plaintiff. At the hearing he was handicapped by the fact that both his witnesses were dead, and, no doubt, so far as it was relevant, by his expulsion from the profession. SWIFT, J., held that he had not discharged the onus of proof (the learned judge appeared to consider the special attestation clause an unfavourable rather than a favourable feature) and pronounced against the plaintiff's residuary bequest and his appointment as executor, but acquitted him of fraud or undue influence. In the absence of these factors, the ignorance of the testatrix as to the provisions in the will which were condemned, would appear to be the only ground left for pronouncing against them, but there is nothing whatever on the face of the report to show that the testatrix had greater knowledge of the legacies than of the residuary bequest, and the normal presumption would be that the testimonium, although in an unusual form, was truthful. A will, of course, may be partially valid and partially void, as in the case of

Brisco v. *Baillie Hamilton* [1902] P. 234, where the solicitor who drew it made an honest mistake as to the interest of the testatrix in certain land, and drew a devise of her undivided moiety in it instead of the whole. JEUNE, P., deleted the reference to the moiety. In the present case, however, there was no suggestion that Mr. WILKINSON had made a mistake, and the reasons for the judgment are not elucidated by the report.

Law for Motor-coaches.

THE PRINCIPLE laid down by Chief Justice HOLT in *Ashby* v. *White* (1703): "Every injury imports a damage, though it does not cost the party a farthing . . . an injury imports a damage when a man is thereby hindered of his own right," was invoked at Wandsworth County Court on 7th August, in *Thomas* v. *King's Service Coaches Ltd.* Mr. F. MOY THOMAS (who was the successful plaintiff in the leading libel suit of *Thomas* v. *Bradbury, Agnew & Co.* [1906] 2 K.B. 627), a former editor of the *Daily News*, summoned the defendant company for breach of contract in failing to convey his wife and himself on a motor-coach trip to Windsor and back on a beautiful summer Sunday, 23rd June, and claimed damages. According to the evidence of Mr. MOY THOMAS and his wife, which was accepted by Judge HARRINGTON, the plaintiff took two tickets at a fare of 4s. each, which entitled him to numbered seats, for the trip to Windsor, and it was agreed that they should be picked up at a certain place at a certain time. They were there ten minutes before the stipulated time, but waited in vain. No coach for Windsor came. The plaintiff protested at the office where he had got the tickets, and was informed that the seats had been allotted to someone else at the starting place. He was invited to take a trip to Brighton and back instead by a coach then leaving, and on his refusing was offered his money back which he refused to accept, unless some offer of compensation were made as well. The judge held that there had been a breach of contract, but despite the plea of counsel that the plaintiff had come forward in the public interest, said that he had made too much of a grievance over a somewhat trivial incident. He ordered the return of the 8s, fares, and assessed the nominal damages suffered by the plaintiff owing to the inconvenience and the loss of a day's enjoyment at £1, and gave judgment accordingly.

The Protection of Farm Animals.

THE LEGALITY of "ringing" the noses of pigs was recently upheld at Haverhill on a charge under the Protection of Animals Act, 1911, s. 1, of cruelly ill-treating, or causing or permitting to be ill-treated, two pigs by unreasonably ringing their noses in an improper manner. The case for the prosecution was that two hogs in a pen at a sale were found with noses scabbed and inflamed by ringing, and an inspector discovered on extricating the rings that they had been fixed too far into the membranes. The object of the operation was to prevent the pigs from rooting and tearing up vegetation, but it was contended that unnecessary suffering had been caused by its improper execution. The defendant was a labourer, and he pointed out that he had fed the pigs three times a day during the month they had worn the rings, and that they were in a flourishing condition without showing any signs of distress or ill-usage. Mr. C. S. GOODCHILD, chairman, stated that the case would establish the object of the Royal Society for the Prevention of Cruelty to Animals, viz., making it clear that ringing must be carefully done, but as no intentional cruelty had been proved the case was dismissed. It is to be noted that it is not cruelty to brand the noses of sheep in the Welsh mountains, if reasonably necessary for the purpose of identification, as laid down by the Divisional Court in *Bowyer* v. *Morgan* (1906), 22 L.T.R. 426. The process of dishorning cattle, however, was held illegal in *Ford* v. *Wiley* (1889), 23 Q.B.D. 203, but this case has not been followed in Ireland or Scotland, where the operation is performed to prevent mutual injury among the animals.

Criminal Law and Police Court Practice.

WITNESSES OUT OF COURT.—A north country paper reports a police court case in which a woman witness remained in court after the defendant's solicitor had asked that all witnesses should leave the court. She admitted that she came to give evidence and that she heard the request.

What is not stated is whether or not the court ordered all witnesses to leave. If she disobeyed the court's order she would certainly be open to reproof and the court might discount the value of her testimony, though it seems clear from the authorities that the better practice is not to refuse to hear such a witness. In the superior courts she would be liable to committal for contempt of court.

A moot point is whether a court of summary jurisdiction would be acting within its power in ordering to be forcibly ejected a witness who refused to obey the order to leave the court. We think it would, so long as care was exercised to see that the minimum amount of force was used. The better and safer way is to exclude witnesses until their turn to give evidence arrives. There is recent judicial authority for adopting this rule in all criminal cases. If, however, a witness has managed to enter the court and refuses to leave, it is reasonable to argue that a rule made in the interests of justice should not be defeated when there is a way of enforcing it which really inflicts no hardship on an individual who is obstinate, and who invites the use of such small amount of force as may be required.

PREVENTIVE DETENTION.—A woman sentenced to three years' penal servitude at Windsor Quarter Sessions this week for false pretences is said to have attempted suicide in her cell while awaiting trial, in dread of being sent back to preventive detention as an habitual criminal. Her counsel said that, unlike men, women who were sentenced to preventive detention served their sentence of penal servitude and preventive detention in one building and in the same cell.

The learned chairman said, wisely enough, that prisoners' statements were not always true. If this one is not, it ought to be speedily corrected; an allegation that a woman may spend nine years in one building while a man similarly sentenced spends six years of the nine in a place where there is a good deal of latitude as compared with an ordinary convict prison naturally arouses comment.

Preventive detention is supposed to be something less rigorous than penal servitude, imposed simply to keep an habitual offender from being a danger to the public.

THE SALE OF DRUGS CONTRARY TO PHARMACOPŒIA.—An unusual case was reported in *The Times* of 26th July in which the Pharmaceutical Society of Great Britain prosecuted a firm of unqualified chemists at Manor Park for selling "chlorodyne" labelled as being in accordance with the British Pharmacopœia but in fact wholly devoid of morphine, one of its most important ingredients. Three informations were laid under the Merchandise Marks Act charging the defendants with applying a false trade description, with selling, and with keeping for the purpose of sale. The magistrate inflicted a penalty of £20 and £5 5s. costs on one summons and ordered the costs to be paid on the others. Counsel for the society said that the defendants, not having a qualified chemist in charge, would have been guilty of an offence under the Dangerous Drugs Act had they sold a preparation containing morphine; and by omitting it they had made themselves liable under the Merchandise Marks Act. Presumably there would also be an offence under the Food and Drugs (Adulteration) Act in respect of the sale of an article "not of the nature or substance or quality" of that demanded, "chlorodyne" being a preparation, the ingredients of which are set out in the British Pharmacopœia.

The Companies Act, 1929.

By ARTHUR STIEBEL, M.A., Barrister-at-Law (Registrar, Companies—Winding-Up—Department, and Author of "Stiebel's Company Law and Precedents").

(*Continued from p.* 523.)—VIII.

WINDING-UP. (Part V of the Act.)

(1) *Preliminary.*

Modes of Winding-up.—There are three modes of winding-up (1) by the court, (2) voluntary, or (3) subject to the supervision of the court.

Contributories.—In the winding-up of a company every present and past member will be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding-up and for the adjustment of the rights of the contributories among themselves, but no present member of a company limited by shares will be liable for more than the amount unpaid on his shares, and no present member of a company limited by guarantee will be liable for more than the amount of his guarantee, and if the company has a share capital, the amount unpaid on his shares. The past members will not be liable if they have ceased to be members for one year or upwards before the commencement of the winding-up, and they will not be liable to contribute in respect of debts and liabilities contracted after they have ceased to be members. Further, past members will not be liable unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them on all the debts of the company. Sums due to a member in his character of member will not be allowed to compete with other debts. The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up. The practice is to settle all present members on the "A list" of contributories, and then, if necessary, to settle a "B list" of contributories consisting of all past members who are liable under the section and have been members within the year. The assets of the company, including the contributions of persons on the "A list" will be divided among all the creditors, and a person on the "B list" can then be called on, to the extent of any amount unpaid on the shares he held, to contribute any sums required to pay any balance due on debts which existed when he ceased to be a member. Sums received from "B contributories" will, however, be distributed, like the rest of the assets of the company, rateably among all creditors, irrespective of the date of their debts.

(2) *Winding-up by the Court.*

Jurisdiction.—The High Court will, in future, have jurisdiction to wind up all companies registered in England. A county court which has bankruptcy jurisdiction will, unless excluded by order of the Lord Chancellor, have concurrent jurisdiction in the case of companies which have a registered office in its district, and a paid-up capital of not more than £10,000, and the Palatine courts have concurrent jurisdiction with regard to all companies with registered offices in their districts.

Every court in England having winding-up jurisdiction under the Act, will have all the powers of the High Court.

The Act contains wide powers of transfer from one court to another. In Scotland the Court of Session has jurisdiction in all cases—while sheriff courts are in the same position as County Courts, which have winding-up jurisdiction.

Cases where a Company may be Wound-up by the Court.—A company may be wound-up by the court if it has passed a special resolution to that effect or failed to deliver a statutory report to the registrar or to hold a statutory meeting, if it has not commenced business or has suspended business for a year, if the number of members is reduced below seven, or in the case of a private company below two, if the company is unable to pay its debts, or if the court if of opinion that it is just and equitable that the company should be wound up.

Petition for Winding-up and effect thereof.—Petitions for winding-up companies may be presented by the company, or by any creditor or creditors, or any contributory or contributories. As a rule, however, contributories who have held their shares for less than six months are not entitled to petition. A contingent and prospective creditor can only petition if he has made out a *primâ facie* case for winding-up and has given such security for costs as is required by the court.

A petition may be presented by the official receiver, where the company is being wound-up voluntarily or subject to supervision, but in such cases the court must be satisfied that the voluntary winding-up or winding-up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

In a winding-up by the court, any disposition of the property of the company, including things in action and any transfer of shares, or alteration in the status of the members of the company made after the commencement of the winding-up, will, unless the court otherwise orders, be void.

Commencement of Winding-up.—A compulsory winding-up will commence on the date of the petition, except where there has been a previous voluntary winding-up. In such cases it will in future commence on the date of the voluntary winding-up resolution, and proceedings in the voluntary winding-up will hold good in the compulsory winding-up, unless fraud or mistake is proved.

Consequences of Winding-up Order.—The courts can stay proceedings against a company at any time after a petition has been presented, and when a winding-up order has been made, or a provisional liquidator has been appointed, no action or proceeding may be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

Executions and distresses against an English company or the English property of a Scottish company will, after the commencement of the winding-up, be void, but the English courts will, in a proper case, give leave to proceed with them; this practice is bound to be affected by the new provisions on the subject which come later in the Act.

Official Receiver in English Winding-up.—Where the winding-up is in England the official receiver attached to the court which makes the order becomes the liquidator of the company, but in future some other officer may be appointed if that course is considered more convenient or more economical. Such a person will be the official receiver for all the purposes of the Act.

Where the winding-up order has been made or a provisional liquidator has been appointed, a statement as to the affairs of the company must be made out and submitted to the official receiver. He may require any persons who have been directors or officers of the company or who have taken part in the formation of the company within one year before the date of the order or appointment, or who have within such year been officers of or in the employment of a company which is, or within such year was, an officer of the Company to which the statement relates, to submit and verify such statement of affairs. The court can dispense with a statement of affairs.

The official receiver must submit a report on the company to the court as soon as possible after the statement of affairs has been submitted, or where there is no statement after the winding-up order. Where a further enquiry is desirable the official receiver may also, if he thinks fit, make a further report or reports stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any director or other

officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

Liquidators.—For the purpose of conducting the proceedings in winding-up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator. In England the court may appoint a provisional liquidator at any time before the making of a winding-up order. The official receiver is almost invariably the person appointed, but other persons can be appointed.

In Scotland, a provisional liquidator may be appointed at any time before the first appointment of liquidators.

After the making of a winding-up order in England, the official receiver becomes liquidator. He must summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing a liquidator in his place.

The court has power to make any appointment necessary to carry out the determination of such meetings, and if there is any difference between the two meetings the court decides the difference and makes such order thereon as it thinks fit.

In a case where a liquidator is not appointed by the court, the official receiver will be the liquidator and he will also be liquidator during any vacancy.

A liquidator, other than the official receiver, will have to give security and must in an English liquidation furnish the official receiver with such information and such access to and facilities for inspecting the books and documents of the company and generally such help as may be requisite.

Liquidators appointed by the court may resign or, on cause shown, be removed by the court. They will receive such remuneration as the court or the committee of inspection directs, and any vacancy in the office of a liquidator appointed by the court will be filled by the court, unless, in England, it is decided to retain the official receiver as liquidator.

Where a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, will take into his custody all the property and things in action to which the company is or appears to be entitled, and the court can vest all or any part of the company's property in the liquidator in his official name. The liquidator can, with the sanction of the court or of the committee of inspection, bring or defend any action or other legal proceeding in the name and on behalf of the company, carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof, appoint a solicitor or law agent to assist him in the performance of his duties and enter into a general scheme of liquidation. He can, without any consent, do everything else (including the appointment of agents) which is necessary for the winding-up of the affairs of the company and distributing its assets. The exercise of these powers is subject to the control of the court.

In a winding-up by the court in England the liquidator must have regard to the directions of the creditors or contributories or of the committee of inspection, and any directions given by the creditors or contributories will override the directions given by the committee.

For this purpose the liquidator may summon meetings of creditors and contributories to ascertain their wishes and he must summon meetings whenever the creditors or contributories have passed a resolution to that effect, or if requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

The liquidator may apply to the court for directions in any such winding-up, and persons aggrieved by any act of the liquidator may also apply to the court. The Board of Trade can release a liquidator and, subject to the winding-up rules, the Board decides the books he is to keep, audits his accounts, and keeps a general control over his actions.

Committees of Inspection.—When a winding-up order has been made by the court in England, it will be the business of the separate meetings of creditors and contributories summoned for the purpose of determining whether or not an application should be made to the court for appointing a liquidator in place of the official receiver, to determine further whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator and who are to be members of the committee if appointed. Such members must be creditors or contributories or persons holding powers of attorney from creditors or contributories.

This provision has now been extended to Scotland, but in that country, where the winding-up order has been made on the ground that the company is unable to pay its debts, it will not be necessary for the liquidator to summon a meeting of the contributories, and contributories will not be represented on the committee.

In England, where there is not a committee of inspection, the Board of Trade can, on the application of the liquidator, do any act or thing which is by the Act authorised or required to be done by the committee.

(*To be continued.*)

"*De Contumace Capiendo.*"

How the Judgments of Ecclesiastical Courts are Enforced.

By Wm. MARSHALL FREEMAN, of the Middle Temple, Barrister-at-Law.

Members of both branches of the profession who are concerned or at all interested in matters ecclesiastical must have felt some amusement on reading in the daily newspapers extracts from an article written by Mr. Wickham Steed for the "Christian World" relating to the incarceration of a Cambridgeshire landowner named Stevens who refused to obey the admonition of the Consistory Court of the Diocese of Ely which adjudged him liable to pay for the repairs of the chancel of his parish church (*vide* Sol. J., 13th July, p. 456). "The Lord Chancellor," writes Mr. Wickham Steed, "can override *habeas corpus* and order a British subject to be haled to prison without trial in a civil court. This in the year of grace 1929." He thinks the Lord Chancellor may be liable to impeachment for "misfeasance—which is wrongful exercise of lawful authority." "Had the Lord Chancellor no discretion?" he demands. "If he had discretion and exercised it against the civil liberties of a subject, was he not guilty of misfeasance? If he had no legal discretion he could have raised the question in the House of Lords or resigned in order to draw public attention to a gross anachronism." And as though that were not sufficient to strike terror into the heart of the Lord High Chancellor of Great Britain, the writer adds: "To what a pass have things in England come if a presumably impartial lawyer who receives £10,000 a year to do his duty to the nation, has so little sense of civil rights as blindly to transform himself into the secular arm of an ecclesiastical court? Is there no means of bringing the Lord Chancellor to book for dereliction of public duty?"

Now, Mr. Wickham Steed has always been looked upon as a responsible journalist—indeed, one has always heard of him as being among the distinguished journalists of the day. How he comes to deliver himself of all this rubbish in a religious newspaper it is difficult to understand, save on the assumption that somebody has been pulling his leg very effectively. Somebody, indeed, has been circulating the same tale to the Press at large. How the Lord Chancellor—or his predecessor (whichever be referred to)—must be smiling!!

Of course, the matter has nothing whatever to do with the Lord Chancellor or his department. His Majesty's judges of the Divisional Court of King's Bench are the delinquents (!)

against whom the thunders of Mr. WICKHAM STEED'S indignation should have been directed—for it is by their authority alone that this writ may issue. It may perhaps be of interest to explain the whole procedure. It came originally under the old Petty Bag Office in Chancery, but the duties of that office were transferred under the Judicature Acts to the Senior Clerk of the Crown Office—actually in 1889.

Put quite simply what now happens is this. If a man buys land which carries with it any ecclesiastical incumbrance, such as liability to repair the chancel of a parish church, it is the duty of the churchwardens and/or parochial church council to see that the obligation is carried out. If the landowner does not do what he is under a legal obligation to do, the proper course is for the complainants to take action against him in the Diocesan or Consistory Court. There, just as in any other court of justice, he can dispute the alleged liability or show cause why the repairs should not be done, and if the court decides against him he can appeal. If he is adjudged liable, the court "admonishes" him to get the repairs done. If he disregards this admonition he becomes what is termed "*contumacious*"—but the Consistory Court has no power of itself to do anything more to him. It can and will give to the complainants a certificate of its finding of law and of the neglect of its admonition. That certificate (legally known as a "*significavit*") must be lodged by the complainants with the senior clerk of the Crown Office of the King's Bench, who then issues a writ *de contumace capiendo*. Having issued this writ the senior clerk hands it to the master of the Crown Office in open court before the judges sitting in the Divisional Court. Their lordships (if they so please) direct it to be filed in the Crown Office. The next thing is that the complainants, if their claim still remains unsatisfied, may sue out the writ and lodge it with the sheriff for execution. That is the procedure, and if the defendant finds himself in prison he has no right to blame the church or anybody other than himself.

When a man finds himself imprisoned after this manner he can only obtain relief by making his peace with the Ecclesiastical Court. This means submission, apology and amends. The court will then order his release. Formerly it was a long drawn-out and by no means inexpensive business to get such a release; but in 1840 by the Statute 3 and 4 Vict., cap. 93, special provisions were made for that purpose. "Whereas it is expedient" runs that Act "to make further regulations for the release of persons committed to gaol under the writ *de contumace capiendo*, be it therefore enacted, etc., that it shall be lawful for . . . the judge of an Ecclesiastical Court if it shall seem meet to him, to make an order upon the gaoler, sheriff, or other officer in whose custody . . . and so on." (The writ of course is not restricted to use for ecclesiastical purposes; but it has now fallen into disuse. I believe the last occasion of issue was thirty years ago.)

The schedule to the statute contains a form of "warrant of discharge." Presumably it was by virtue of such a warrant that Mr. STEVENS was released from his experiences of Bedford Gaol.

Though the object of this memorandum is merely to explain the procedure in regard to the writ *de contumace capiendo* (which indeed is at present the only available means of enforcing an ecclesiastical judgment of this character), I may perhaps be allowed to suggest that the sooner provision is made for disputed claims of this nature to be tried in the High Court or the County Court as ordinary civil actions the better. It was stated, in the course of the Ely proceedings, that some 200 more cases are likely to arise of a similar character. The reason for this is that since the passing of the Ecclesiastical Dilapidations Measure of 1923 parochial church councils have been obliged to give heed to structural neglect of parish churches which had become serious. Naturally they have begun to put pressure upon lay impropriators to fulfil their legal obligations. In many cases no lay impropriator can be found—then the parochial church council becomes liable!

Privilege for Volunteered Statements.

THE case of *Watt* v. *Longsdon* before the Court of Appeal, reported in *The Times* of 24th July, is of some importance in business matters, but possibly even more so in its bearing on the every-day rights of social life. The story disclosed at the hearing was a somewhat remarkable one. A Mr. SINGER was chairman of a company of which the plaintiff was managing director, and the defendant another director. The defendant also claimed friendship with the plaintiff's wife, based, apparently, on the long acquaintance of their respective families. Another employee of the company told the defendant a long and circumstantial story of the plaintiff's debaucheries while paying a visit to Morocco in the service of the company. The defendant repeated the story both to the plaintiff's wife and SINGER. The plaintiff brought his action for libel, and it was then admitted that the story, a very gross one, was entirely false. On the matter coming before HORRIDGE, J., however (see 45 T.L.R. 419), the defendant pleaded privilege, and his counsel cited *Coxhead* v. *Richards* (1846), 2 C.B. 569, and other cases. HORRIDGE, J., allowed the plea of privilege, in respect of the communication both to the wife and chairman, and, finding no evidence of malice, dismissed the case without submitting it to the jury. The Court of Appeal has now held (1) that the communication to the wife was not privileged, (2) that that to the chairman was so, but (3) that (in the opinion of the majority of the court) there was evidence of malice in the latter case, so it should have been left to the jury. A new trial of both issues was therefore ordered.

As to the communication to the wife, the problem of privilege can be stated simply, but the application in a border-line case, as SCRUTTON, L.J., pointed out, may occasion extreme difficulty. On the one hand, the mere mischief-maker or busybody is not protected if he makes false statements, even if he believes them to be true, but the person with a duty to communicate his honest opinion is protected, provided, of course, that he is not using his privilege as a cloak of malice. In social relations, therefore, the judges have to define the degree of intimacy which renders a volunteered opinion of a derogatory nature in respect of one particular person to another a duty. This degree of intimacy, as SCRUTTON, L.J., observed, depends on the view the great mass of right-minded men would take. And, as he very naturally further remarked, "It was not surprising that, with such a standard, both judges and text-writers treated the matter as one of great difficulty, in which no definite line could be drawn."

When any case is on the border, the authority most pressed for the defendant by his counsel is *Coxhead* v. *Richards*, *supra*, which perhaps may be regarded as the high-water mark of privilege. The mate of a coasting ship in that case wrote a long and circumstantial letter to a friend of his, detailing the drunken habits of the captain, and the danger thereby occasioned to navigation in general, and the ship, cargo and crew in particular. If the story was true, another voyage might very well have resulted in serious disaster and loss of life. The defendant, feeling that the letter placed him in a position of responsibility, asked advice as to his course from an Elder Brother of the Trinity, and a prominent shipowner. Each gave it as his opinion that, believing the letter to be true, as he did, he should acquaint the owner of the ship with its contents. He did so, and the latter summarily dismissed the captain without inquiry as to the truth of the allegations against him. On the captain's libel action, privilege was pleaded and allowed by TINDAL, C.J. On appeal for a new trial, on the ground of misdirection, TINDAL, C.J., and COLE, C.J., upheld the ruling, and COLTMAN and CRESSWELL, JJ., rejected it, and, the Court being divided, it was not over-ruled. No doubt the judges who ruled for privilege were swayed by

the gravity of the possible consequences, if the story was true, and the captain took the ship out for another voyage, and the obvious *bona fides* of the defendant. That the captain should have been dismissed without the opportunity of refuting the story was, of course, grossly unjust, and his dismissal was the direct result of the defendant's communication. In effect, the Court appears to have decided the case on the seriousness of the accusation, for, if the captain had not been in charge of lives and valuable property, it is difficult to find any justification in such a volunteered communication to a perfect stranger. The case, however, has become an authority to shelter persons making communications in very different circumstances.

As Mr. GATLEY points out in his work on libel, p. 250, the American courts have not allowed counsel for busybodies to cite *Coxhead* v. *Richards* indiscriminately. In *Krebs* v. *Oliver* (1858), 78 Mass. 239, the defendant, who was no relation of the plaintiff's fiancée, volunteered the statement to her relatives that the plaintiff had been convicted of larceny. In the latter's action for libel, *Coxhead* v. *Richards* was cited, but BIGELOW, J., ruled (p. 243), "A merely friendly acquaintance or regard does not impose a duty of communicating charges of a defamatory character concerning a third person, although they may be told to one who has a strong interest in knowing them. The duty of refraining from the utterance of slanderous words without knowing or ascertaining their truth, far outweighs any claim of mere friendship." *Count Joannes* v. *Bennett* (1862), 87 Mass., 169, was a very similar case, though, curiously enough, *Krebs* v. *Oliver* was not cited. *Whiteley* v. *Adams* (1863), 13 C.B. (N.S.), 392, was another case of a volunteered statement, or a series of statements, apparently founded on local gossip, by one clergyman to another, and the judgment, at least, of ERLE, C.J., which the other members of the court followed, was apparently based on the fact that the plaintiff was a member of the congregation of the clergyman to whom the communication was addressed. In *Stuart* v. *Bell* [1891] 2 Q.B. 341, a host volunteered a statement to his guest defamatory of the latter's valet, who brought an action. WILLS, J., ruled that there was no privilege, and the jury gave substantial damages. This ruling was reversed in the Court of Appeal—in which, however, LOPES, L.J., delivered a dissenting judgment, an unusual occurrence in his case. KAY, L.J., regretted that, LINDLEY and LOPES, L.JJ., disagreeing, the casting vote should not fall on one to whom the law on this subject was more familiar; however, he concurred with LINDLEY, L.J.

In neither of the above cases had any special emergency arisen, as in *Coxhead* v. *Richards*, and in the last case, which concerned a suspicion of theft, there was no suggestion that the defendant was alarmed that the plaintiff, under such suspicion, should be in his house, for both guest and valet were just due to leave when the communication was made. The relation of host and guest was for the purpose, therefore, hardly more than one of friendship. *Stuart* v. *Bell* is, of course, a binding authority on all courts below the House of Lords, but the present decision in *Watt* v. *Longsdon* indicates that its application is likely to be restricted rather than extended.

The communication to the chairman of the company in the latter case was, of course, on a different footing. There are many cases in the books as to communication by masters about servants, but few as to one servant making a communication to a common master about another. *Harris* v. *Thompson* (1853), 13 C.B. 333, was, however, on somewhat similar lines, the statement being made at a board meeting of a company by a director as to an auditor, and the Court took the privilege for granted. Possibly in such cases the element of malice, whether as mere spite, or desire for self-advancement by appearance of zeal, or the hope to succeed to the position of the person defamed, requires more careful consideration than in others; but, when it is absent, privilege may be regarded as reasonably established.

A Conveyancer's Diary.

Inducement not to exercise Statutory Powers—Effect of S.L.A.

I do not wish to appear to be riding a hobby-horse too hard, especially when most of us are thinking more of where and when to go for rest and change than of such troublesome things as settlements and trusts for sale, which at the best are dull enough matter for reflection. I cannot, however, forbear from following up last week's "Diary" by pointing out what an excellent example the case of *Re Patten* is of the frustration of a settlor's obvious intention by the provisions of the S.L.A. It will be remembered that a testator had set aside a fund the income of which was to be devoted to payment of the outgoings and repairs of a house in which a relative of the testator was to have the right to reside during her life. The question was, what would happen if the lady ceased to occupy the house. That question was answered by saying that if she let it the income of the fund would still be applicable in payment of the outgoings and repairs, but if she sold it that would not be so, and the capital would become divisible as directed in the will. Moreover, in the event of a sale the lady would be entitled to the income of the proceeds for the remainder of her life, although the testator had expressly provided to the contrary. Under the will the interest of the lady was neither more nor less than a right to occupy, and there was a definite express trust for the division of the proceeds in the event of a sale taking place. But the wishes of the testator (quite plainly expressed as they were) were entirely set at nought by the operation of the S.L.A.

Now for my "hobby-horse." If only the testator had settled the house upon trust for sale with a power for the lady to reside until sale and providing that no sale should take place without her consent with consequential trusts and directions, all the wishes of the testator could have been carried into effect, and, incidentally, the expense of an application to the court would have been saved. Without suggesting that the decision in *Re Patten* cannot be supported (in fact I think that it can) it seems as though, even in that case, some way might have been found of carrying out the intentions expressed in the will. But such is the S.L.A.!

There are no doubt many cases in which the provisions of the Act against any inducement being offered to a tenant for life not to exercise the statutory powers (s. 186) operate beneficially from the public point of view as tending to remove restrictions upon the free disposal of property, but it often happens (as it did in *Re Patten*) that without really furthering public policy in that regard, those provisions seriously interfere with the right of private individuals and result in the setting aside of the quite legitimate wishes of settlors and testators.

However, there seems no likelihood of any alteration in the statute law to meet such cases, and therefore the only thing to do seems to be to avoid the S.L.A. altogether by creating a trust for sale.

By the way, *Re Simpson* [1913], 1 Ch. 277, which was, on one point, followed in *Re Patten*, affords another example which should be borne in mind.

Perhaps, during the Vacation, some ingenious reader may devise some method of amending the S.L.A. which would effectively remedy such seeming anomalies without offending against the general policy of the Act. But I hope that most of the readers of the SOLICITORS' JOURNAL will be better employed.

THE INNS OF COURT O.T.C. WAR MEMORIAL.

Many of our readers who received training in the Inns of Court O.T.C. will regret to learn that the War Memorial erected on Berkhampstead Common to commemorate the stay of the Corps in that district between 1915 and 1918 was recently struck by lightning and seriously damaged. Motoring over the common recently we noticed that nothing but the concrete core was left, and, making inquiries, we were informed of the accident. We hope that it will soon be restored.

Landlord and Tenant Notebook.

Has "Improvement" the same meaning in s. 3 as in s. 1 of the Landlord and Tenant Act, 1927?

An interesting question arises under the Landlord and Tenant Act, 1927, as to whether the expression "improvement" has the same meaning in s. 3 of the Act as in s. 1 of the Act.

Having regard to the scheme of the Act it would appear that this part of the Act confers two distinct and independent rights on the tenant, i.e., firstly, the right to execute improvements on the holding in *invitum* the landlord, and despite the existence of restrictive covenants to the contrary contained in the lease or agreement; and, secondly, the right to recover compensation in respect of improvements at the termination of the tenancy.

The first right is governed mainly by the provisions of s. 1 of the Act; the second, mainly by those of s. 3, though in each case it may be necessary incidentally to consider the provisions of ss. 1, 2 and 3 together.

In order to be entitled to execute an improvement under s. 3 the tenant must show that the improvement complies with certain conditions. Disregarding the proviso to sub-s. (4) of s. 3, it will be found that the conditions contained in s. 3 are as follows: The improvement must be (i) of such a nature as to be calculated to add to the letting value of the holding at the termination of the tenancy, (ii) reasonable and suitable to the character of the holding, (iii) of such a character as not to diminish the value of any other property belonging to the same landlord or to any superior landlord from whom the landlord or tenant directly or indirectly holds [see s. 3 (1), paras. (*a*), (*b*) and (*c*)], (iv) of such a character as not to be calculated to injure the amenity or convenience of the neighbourhood [s. 3 (2)].

To consider now the conditions that must be fulfilled in order to establish a right to compensation for improvements. In the first place, the tenant must have followed the procedure indicated in s. 3, and must therefore have proved *before* executing the improvements that the improvement complied with the four characteristics above mentioned. But further conditions must be complied with by the tenant in order to recover compensation in respect of improvements under s. 1. Apart from observing the particular procedure laid down by the Act with regard to notices, etc., the tenant must show that the improvement satisfies certain other requirements, and in the following cases (*inter alia*) no compensation can be claimed, viz., in the case of—

(*a*) tenant's fixtures, which the tenant is by law entitled to remove;

(*b*) improvements made less than three years before the termination of the tenancy;

(*c*) improvements made in respect of a statutory obligation;

(*d*) improvements which the tenant or his predecessors in title were under an obligation to make in pursuance of a contract entered into for valuable consideration including a building lease.

Now it is conceivable that the question may arise in certain cases as to whether the tenant is entitled to execute the improvements, although it is quite clear that he will not be able to recover compensation therefor at the termination of his tenancy. Thus, for example, such a question may conceivably arise where the tenant intends to execute an improvement which consists in effect of the annexation of tenant's fixtures to the holding or where the tenant is desirous of executing an improvement within the last three years of the tenancy.

In such cases can the tenant avail himself of the provisions of s. 3 of the Act?

It is true that, under s. 19 (2) of the Act, a tenant may request the lessor to grant him a licence to execute the improvement and proceed to execute the improvement even if such licence is refused, provided that the licence is being unreasonably withheld.

There may, however, conceivably be cases in which a tenant cannot avail himself of the provisions of s. 19 (2), as, for example, where the lease contains an *absolute* covenant against the making of improvements and not merely a conditional covenant against the making of improvements without licence or consent. In such a case, if there is really the distinction between these two kinds of covenants as some writers give it as their opinion that there is, then clearly, s. 19 (2) would not help the tenant where the covenant was of an absolute nature. If, however, the premises constitute an holding within Pt. 1 of the Act, the question will at once become a very important one from the tenant's point of view as to whether he can execute improvements under s. 3.

Although this point is by no means entirely free from doubt, the view is expressed here that a tenant might in such circumstances, in default of obtaining the consent of the landlord, apply to the tribunal under s. 3 for a certificate that the proposed improvement is a proper one and proceed to execute it notwithstanding that the improvement in question is of such a character that no compensation could be claimed at the termination of the tenancy in respect therefor, by reason of the fact, for example, that the improvement if executed must necessarily be executed within three years of the termination of the tenancy.

Our County Court Letter.

NOTICE OF SUSPENSION OF PAYMENT.

The question whether the negotiation of a scheme had brought the debtor within the Bankruptcy Act, 1914, s. 1 (1) (*h*), was recently considered by the Divisional Court in *In re A Debtor: ex parte the Petitioning Creditor* v. *The Debtor*. The registrar of the Bradford County Court had dismissed the petition on the ground that there was no proof of notice of suspension constituting an act of bankruptcy. The debtor had been a wool merchant for many years, but in 1920 he had heavy losses, and on the 1st January, 1928, he appointed the petitioning creditor his financial adviser for seven years at £4,000 per annum, and a sum equivalent to income tax thereon, but the agreement was terminated in March, 1929. In 1928 the debtor was indebted to four banks, and he also owed £600,000 to the Inland Revenue for income tax, super-tax and excess profits duty, and a scheme of re-organisation was prepared whereby the debts would be paid by an assignment of the assets to a company for distribution among the creditors. The draft provided that the petitioning creditor should be offered the post of secretary of the holding company at a salary to be fixed, and that the directors of each subsidiary company should consider his future position in relation to each company, it being the intention of the parties that he should be offered a suitable appointment at an adequate remuneration. It was contended that this was an illusory substitute for a definite agreement, as the debtor had transferred all his assets to the company, and—although it was hoped that every creditor would ultimately be paid in full—in the meantime payment was suspended. The case for the debtor was that, even if he had put it out of his power to pay, this was not equivalent to notice of suspension, and there had in fact been legal tender of the full amount due to last March, viz., £1,218 18s. 6d., which the petitioning creditor might safely have accepted since the petition was dismissed. Mr. Justice Clauson and Mr. Justice Luxmoore held that the registrar was not justified in stopping the case on accepting the submission on behalf of the debtor. The appeal was therefore allowed, the matter being referred back to the registrar, with costs to be paid by the respondent.

A similar decision had been given in *In re A Debtor* [1929] 1 Ch. 362, in which a scheme had been discussed between the

debtor and the managing clerk to the petitioning creditor's solicitors. The proposal was that a composition should be offered to creditors in Switzerland on condition that they released goods in England, from the realisation of which the debtor would offer his English creditors 5s. in the pound. Mr. Registrar Francke held that this constituted a valid notice to a creditor, and a receiving order was therefore made, but the debtor appealed on the ground that a mere statement in conversation that he was in difficulties, and could not pay, was not meant to convey that he had suspended payment—in the sense of having no intention of paying anyone. In the Court of Appeal it was pointed out by Lord Hanworth, M.R., that no one accustomed to deal with business affairs could fail to appreciate that the effect of the debtor's statement was that he had no hope—or at most, but a hypothetical hope—of being able to make payment at all, and that he had therefore suspended payment. Lords Justices Greer and Russell concurred in dismissing the appeal.

It was pointed out in the last-named case, at p. 374, that there is no divergence in principle between the decisions of the House of Lords in *Crook* v. *Morley* [1891] A.C. 316, and *Clough* v. *Samuel* [1905] A.C. 446. In the former case the debtor had written that he was unable to meet his engagements, and invited attendance at a meeting at which he would state his position, and it was held that this would induce the creditors to believe that he intended to suspend payment, and was a notice amounting to an act of bankruptcy. In the latter case a stockbroker's solicitor told two of his client's creditors that there would be a difficulty in paying them at the approaching settlement, and he suggested that they should close their accounts. It was held that the debtor had no intention to give notice of suspension, and that, in fact, no such notice was given within the meaning of the then equivalent of the above sub-section.

Practice Notes.

TRESPASS TO OYSTER BEDS.

At the last Devon Assizes, in *Mead* v. *Stone & Rolf Limited*, the plaintiff claimed damages for the grounding of the steamship "Eskwood," in the Penryn River, whereby oyster beds were damaged to the extent of £30, and 25,000 oysters were destroyed of the value of £10 10s. per thousand. The plaintiff contended that the vessel failed to keep a proper course, and tried to ascend the channel two hours before there was sufficient tide, and although the Penryn River was a foul river from the point of view of the Minister of Agriculture and Fisheries, the oysters were only required to be sent for purification to the Helford River if intended for the English market. The oysters in question were mainly sent to Ostend for relaying, but could also be sold at home because of the treatment given them, as the plaintiff had part of a pure river of his own. The defence denied the trespass, and contended that (1) If the ship ran against the oyster beds the latter were insufficiently marked; (2) The grounding was a mere accident, whereas the plaintiff must prove negligent navigation. Conflicting evidence was given as to the time and place of grounding, but Mr. Justice Roche held that the voyage was made at least an hour sooner than if correct information had been obtained as to the tide, and that the vessel was aground for forty minutes in a position attributable to negligent navigation. The oyster bed was sufficiently known and marked, but when it became bare of water many oysters had been buried by pressure of the ship, while others were killed by "sanding" caused by the working of the propeller, and judgment was therefore given for £200 and costs. It is to be noted that such damage is not necessarily a trespass, as it was held in *Petrie* v. *Owners of s.s. "Rostrevor"* [1898] 2 Ir. R. 556, that a person who had wrongfully set oysters in a place open to public navigation could not recover damages, even though injury was caused by faulty seamanship.

IMPLIED TERMS OF SPORTING TENANCIES.

There is no implied warranty of title on a grant of a licence coupled with an interest, as shown by the recent decision in *Robinson* v. *Smales and Another*, at Skipton County Court. The plaintiff was a farmer, and had let the rabbiting to the defendants for £12, no restrictions being imposed as to the use of snares, ferrets or guns, but after the defendants had paid £5 on account they were prohibited from using any guns. Although the plaintiff had let the rabbiting in good faith, it transpired that he had himself taken the farm without any written agreement as to the shooting rights, which had been leased by the landlord to a Liverpool shipowner. The latter's gamekeeper had not interposed, however, until after the defendants had had the benefit of the shooting, and it was submitted that they ought to carry out their side of the agreement by paying the balance due. The defendants' case was that they were out of pocket after paying expenses, and they counter-claimed £6 10s. for breach of contract, but His Honour Judge McCleary held that there had been no substantial breach, and gave judgment for the plaintiff for £6 10s. and costs, the counter-claim being dismissed.

Correspondence.

Rating and Valuation (Apportionment) Act, 1928, and Local Government Act, 1929.

Sir,—I have recently met with a point under the Rating and Valuation (Apportionment) Act, 1928, and Pt. 5 of the Local Government Act, 1929, which must have arisen in other cases.

Objection was taken by a firm to the omission of their premises from the rating list, as both industrial hereditaments *and* freight transport hereditaments. This firm is doing business which it is contended entitles them to relief under both these heads.

At the hearing of the objections, the chairman ruled that the objection must be for non-insertion under one head or the other, but it could not be both, and he adjourned the matter for the objectors to consider the point.

The chairman, in reply to a question, stated that as industrial hereditaments and freight transport hereditaments were dealt with under separate sections of the 1928 Act, applicants must elect under which head they wished to apply for relief.

There seems no authority for the ruling, and as committees have recently commenced hearing these cases, it would be interesting to know whether other readers have had the same kind of case, and, if so, how the committees have dealt with them.

London, E.C.3. G. C. B.
1st August.

Legitimacy Act, 1926.

Sir,—I am directed by the Senior Registrar to inform you that the following practice is in force in the Principal and District Probate Registries, in cases where application is made for a grant of Letters of Administration by a person claiming to be a legitimated child of the deceased:—

A legitimated person will be described in the grant in the same way as an ordinary applicant (i.e., a lawful son or daughter) upon proof of legitimation, according to the circumstances of the case, by production of (*a*) a certified copy of the certificate of re-registration, or of (*b*) a decree made pursuant to s. 188 of the Supreme Court of Judicature (Consolidation) Act, 1925, and the Legitimacy Act, 1926, and subject to a clause in the oath stating that he, or she, is the person referred to in the certificate or decree.

H. H. H. Coates.

Principal Probate Registry,
Somerset House,
London, W.C.2.
3rd August.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Disclaimer by Married Woman SUBJECT TO RESTRAINT ON ANTICIPATION.

Q. 1695. Under a will freehold property is settled on A for life, then to B (a married woman) for life, with restraint on anticipation, and then absolutely to the children of B. There is no trust for sale under the will. The trustees to the will under the S.L.A. have sold the trust property and same now consists of a fund invested in trustee securities. We act for the children of B who are desirous of raising a loan on their reversion, and B, their mother, has agreed to disclaim her interest to enable this to be done. On the authority of *Re Wimperis, Wicken* v. *Wilson* [1914] 1 Ch. 502, it is clear that a married woman is entitled to disclaim an interest in personal property, although same may be settled on her with restraint on anticipation. The proposed mortgagees have taken exception to the title which the children of B have submitted on the grounds that there is no authority for saying that B is entitled to disclaim an interest in real property which is subject to restraint. In the case before mentioned it was stated in the judgment that it was possible that other considerations might apply to real estate, but it seems to us that it is difficult to conceive what other considerations could apply. "Halsbury's Laws of England," vol. 28, p. 599, note (*d*), refers to *Re Wimperis* as an authority for the disclaimer of real estate, but, as mentioned, this case apparently leaves the point open. Is there any authority for stating that a married woman subject to restraint on anticipation can disclaim her interest in the fund above mentioned? It appears that under the S.L.A. the fund must be regarded as real estate, seeing that it is proceeds of the sale of real property.

A. Section 168 of L.P.A., 1925, declaring power of a married woman to disclaim interest in land is in general terms and would cover the case of a married woman restrained from anticipation. *Re Wimperis* is an authority if one is wanted, that the restraint on anticipation makes no difference: see note to the section Wolstenholme and Cherry's Law of Property Acts.

This, of course, is subject to the condition that the woman has not done anything to indicate an acceptance of the gift.

Intoxicating Liquors—ADDITION TO HOTEL—WHETHER CONSENT OF LICENSING JUSTICES REQUIRED.

Q. 1696. At the annual general licensing meeting held in February last a new on-licence was granted in respect of a recently erected hotel, and the monopoly duty has been assessed and paid. The hotel has now built on a large wing and wishes to open it very shortly. The extension is erected on a portion of the hotel garden. The licence granted at the annual general licensing meeting was in respect of the building and we presume does not extend to include the garden. If this is so it cannot be said that the extension is an alteration *to premises in respect of which a Justices' on-licence is in force*, and therefore s. 71 of the Licensing Consolidation Act, 1910, would not appear to apply. Would such a case fall within the provisions of s. 71? In our opinion, no. It is not a structural alteration of premises in respect of which a justices' on-licence is in force, but an extension of the property erected on unlicensed ground, and therefore will necessitate an application for a new licence which can only be made to the annual general licensing meeting, and not at any transfer sessions. We shall be glad to have an expression of your views as the hotel wishes to be able to use the extension by the end of July. If in your opinion the case falls within s. 71, we presume the whole question of monopoly value duty will have to be reviewed.

A. Whether the garden was part of the licensed premises is a question largely of intention, and may be held to depend on the plans originally placed before the justices. The opinion is given on the facts stated that no new licence is required, but whether it is an alteration coming within s. 71 is a question of fact for the justices who are usually largely influenced by the police report. It is also a question of fact whether the premises are substantially the same as those licensed. In all such cases it is wise to submit plans, which can be done at a transfer session. It is suggested that the view of the clerk to the justices be taken as the justices would probably act on his opinion: see *R.* v. *Raffles*, 45 L.J. M.C. 61, and *Deer* v. *Wirrall*, 64 L.J. M.C. 85.

Casual Profits.

Q. 1697. A coal factor who deals purely in the wholesale coal trade has a private deal on his own account over some scrap metal which he purchases and sells at a profit and has never before or since had such a deal. The Commissioners of Income Tax have assessed my client under Sched. D, on the profit arising from such transaction. Is this profit in your opinion taxable, and if so, the authority? It is proposed to resist this assessment on the grounds that: (*a*) It is a casual transaction resulting in a casual profit or gain; (*b*) It is of a non-recurring nature; (*c*) It was unconnected with his trade or business; (*d*) It did not arise out of or in the course of his trade or business; (*e*) It was an isolated purchase and sale unconnected with his trade or business and does not normally attract liability to income tax and that the assessment and the claim thereby constituted is unreasonable, harsh and/or excessive. Can you quote me any authorities, statutory or otherwise, to help me on the points raised and your opinion thereon. Are there any other grounds upon which the assessment could, in your opinion, be resisted? If so, please quote them.

A. Since the decision in the case of *Martin* v. *Lowry*, 42 T.L.R. 233; 11 T.C. 297, the interpretation of assessable profits has been very wide. The original intention of the purchaser is an important factor (*California Copper Syndicate* v. *Harris*, 41 Sc. L.R. 691; 5 T.C. 159). The judgment in the case of *Commissioners of Inland Revenue* v. *Livingstone and Others*, should be read. From this it would seem that the buying and selling of a vessel would be regarded as an isolated transaction not assessable to income-tax if repairs and alterations had not taken place. In this case the assessment cannot be regarded as "unreasonable, harsh and excessive" in the light of recent cases, but it is thought that the appellant would have a strong case on appeal to the Special Commissioners on the grounds suggested in the query.

Building Society—AFFIXING OF COMMON SEAL.

Q. 1698. The rules of a building society, incorporated under the Building Societies Acts, provide that the common seal of the society shall be kept in the custody of the secretary, and shall be affixed to all documents requiring the same in the presence of the secretary and one or more of the directors. A form of vacating receipt to be endorsed on mortgages is contained in an appendix to the rules, and, according to this,

one of the attesting witnesses to the sealing of the receipt should be the "secretary or manager." Another rule provides that the directors shall "have power to appoint a member of the office staff to fulfil the duties of the secretary in the temporary absence of the secretary from illness or other cause." The rules have been registered at the Registry of Friendly Societies. An assistant secretary of the society has recently been appointed, and the sealings of vacating receipts endorsed on mortgages have, in some instances, been attested by this assistant secretary and one of the directors, although the secretary has not been absent through illness or other cause, but has, in fact, been in the society's office at the time of the sealing. It is not known to us whether the directors have passed any resolution purporting to authorise the assistant secretary to attest in the place of the secretary, but we think that such a resolution could not alter the requirements of the rules. The receipts attested by the assistant secretary do not show that he was acting as secretary *pro tem.* We shall be grateful for your opinion as to whether a receipt attested by the assistant secretary and by a director effects a proper discharge of the mortgage, and whether anything short of an alteration of the rules can constitute the assistant secretary a sufficient attesting witness when the secretary himself is available.

A. In our opinion a receipt attested by the assistant secretary as such is not effective. He is not the secretary (or manager). The rules should, in our view, be strictly construed. Possibly if the assistant secretary was appointed a joint secretary the difficulty could for the future be overcome. Apart from this suggestion an alteration of the society's rules appears inevitable. We would observe that there is probably other evidence of the satisfaction of the debt, and the consequent cesser of the mortgage term, in the shape of the members' "advance share book."

Dealing in Property.

Q. 1699. Two solicitors in partnership have, during the last two or three years, expended the profits derived from their practice in conjunction with their own moneys in the purchase of house properties. Certain of these have been retained as investments, but in the majority of cases they have been re-sold at profits. The inspector of taxes seeks to assess the partners to income tax on these profits, but the partners contend that their property dealing is not a trade or business and does not come within the normal scope of their profession, and consequently the profits made are capital profits. The inspector of taxes relies on *Martin* v. *Lowry* [1926] 1 K.B. 550; [1927] A.C. 312; 95 L.J., K.B. 497; 159 L.T.J. 511; 135 L.T. 523; 41 T.L.R. 574; 42 T.L.R. 233; [1925/6] 11 T.C. 297. In comparison to their activities relating to their professional practice the operations of the partners in their property dealings are on a minor scale, but this did not appear to be so in the case above mentioned. Further, an important reason of the partners in dealing in property instead of say, stock, was the possibility of their coming into contact with possible clients, thus increasing their professional income. It may be added that their operations have not ceased. We shall be glad of your views as to whether there is liability to tax and assessments can rightly be made.

A. Whether or not such a profit is assessable to income-tax is a question of fact for the determination of the commissioners. An important factor in forming an opinion in this matter is the original intention of the purchaser (*California Copper Syndicate* v. *Harris* 41 Sc. L.R. 691; 5 T.C. 159). Mr. Justice Rowlatt has said: "Annual profits or gains are profits or gains in any one year, or in any year as the succession of years comes round." It will be seen that such a definition embraces almost everything and the revenue authorities are not slow to profit by it. The word "annual" for income-tax purposes has ceased to have any meaning. In the circumstances referred to in the question the following factors would be of importance: (*a*) intention, and (*b*) the number of transactions. For instance, if only three or four deals were made, apart from investments, it is probable that the revenue authorities would not proceed with assessments. The fact that the partners entered the transactions with a view to increasing their professional income would have no bearing on the point, except to emphasise that the intention was not simply to invest money. It is thought that the revenue authorities would have a fairly strong case for assessment in the circumstances referred to.

Effect of Divorce upon Separation Agreement.

Q. 1700. A and B (husband and wife) are about to enter into a deed of separation. The draft deed which has been prepared provides (*inter alia*) that A will during the joint lives of A and B pay an annuity to his wife B for her separate use and for her maintenance and support. No provision is made that the annuity shall be payable only so long as B remains chaste. A's solicitors now wish the draft to be amended to provide that the annuity shall only be payable whilst A and B are husband and wife, that is to say, in the event of B (the wife) committing adultery and A obtaining a divorce, the annuity shall cease to be payable. B's solicitors contend that in the event of A obtaining a divorce the deed of separation would cease to have effect, but the terms of the deed would be taken into consideration by the court in considering whether or not maintenance should be paid by A to B. Will you please state what the effect will be upon the deed in the event of A obtaining a divorce against B and *vice versa*?

A. The amendment desired by A's solicitors is unnecessary in view of the Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 190, under which the court may, on any decree for divorce, order that the husband shall secure to the wife such sum as having regard to . . .the conduct of the parties, the court may deem to be reasonable. The contention of B's solicitors is therefore correct, and the effect upon the deed in the event of A obtaining a divorce against B, and *vice versa*, is that the court will have full power to make any order it may "deem reasonable" or to vary such order under s. 196 as it may "think just." It may be—as stated by Lord Hailsham, in *Hyman* v. *Hyman* [1929] 45 T.L.R., at p. 446—that the court will not deem it reasonable to order any further payment.

Undivided Shares—Partnership Property.

Q. 1701. A and B were in partnership as clothiers having contributed £6,000 in equal shares of £3,000. In March, 1926, as part of the partnership property they purchased two freehold shops at £1,500, of which sum £1,000 was left on mortgage. A died intestate in February, 1927. Letters of administration to A's estate were granted to C (his widow) and D. B has paid the administrators C and D in cash A's share of the partnership assets and has retained the shops. B now desires the freehold shops vested in him absolutely subject to the mortgage debt which B proposes to repay. I should be obliged if you would advise the proper course to be adopted, with references to appropriate precedents in the "Encyclopædia of Forms and Precedents."

A. The conveyance of 1926 must have vested the legal estate in A and B as joint tenants upon trust for sale. C and D as personal representatives of A should assign the equitable interest vested in them to B, and by the same deed B, as being then absolutely entitled in equity, should convey the legal estate to himself subject to the mortgage debt and term, but free of the trust for sale. B should indemnify C and D, and the estate of A against the mortgage debt. We regret that we cannot quote a precedent.

Notes of Cases.

Court of Appeal.

Watt *v.* **Longsdon.**

Scrutton, Greer and Russell, L.JJ. 23rd July.

DEFAMATION—LIBEL—PRIVILEGE—PRIVILEGED OCCASION—MORAL, SOCIAL OR BUSINESS DUTY TO GIVE INFORMATION—INTEREST OF PERSON RECEIVING INFORMATION—STATEMENT MADE TO PLAINTIFF'S WIFE.

Appeal from Horridge, J., and a special jury.

The plaintiff claimed damages for alleged libel in that the defendant had published to the plaintiff's wife and to two other persons who were in the employment of the same company a letter reflecting on the plaintiff written to the defendant by one, Browne, on 30th April, 1928, and in respect of a letter written by the defendant in reply to Browne's letter, on 5th May, 1928. The parties to the action and Mr. Browne were in the employment, in Morocco, of the Scottish Petroleum Company. Browne was the manager, the plaintiff was the managing director, and the company had, in England, a chairman, named Singer, who held a very large proportion of shares in the company. The defendant had been in Morocco in business, and upon friendly terms with the plaintiff and Browne, and was a friend of the plaintiff's wife, who had nursed him in an illness. In November, 1927, the company went into voluntary liquidation, and the defendant was appointed liquidator. In April, 1928, the plaintiff's wife was in England, and the plaintiff was in Morocco. The defendant, in England, received, in May, 1928, from Browne, in Morocco, a letter stating that the plaintiff had left for Lisbon to look for a job, that he had left a bill for £88 for whiskey unpaid, and that he had been for two months in immoral relations with his housemaid, who was now publicly raising claims against him for money matters. The woman was described as an old woman, stone deaf, almost blind, and with dyed hair. A number of details were given which Browne said Watt's cook had corroborated. The information was mixed up with an allegation that the plaintiff had been scheming to compromise or seduce Mrs. Browne. The letter concluded: "From a letter shown to me by Mr. Watt, I know how bitterly disappointed Mrs. Watt is, and how very much troubled she is. It would, therefore, perhaps be better not to show her this letter as it could only increase most terribly her own feelings in regard to her husband. These awful facts might be the cause of a breakdown to her, and I think she has enough to cope with at present. Mr. Singer, however, should know." The defendant believed the statements in the letter to be true, and on 5th May, 1928, without making any inquiries, sent Browne's letter to Singer, the chairman of the company. On the same day the defendant wrote a long letter to Browne, in which he said that he had long suspected Watt's immorality but had no proof, that he thought it wicked and cruel that Mrs. Watt, a very old friend of the writer's should be in the dark when Watt might return to her, that he (the defendant) would not speak until he had a sworn statement in his possession, and only with such proof would he speak, for an interferer between husband and wife nearly always came off the worst. Could Browne get a sworn statement. "It may even be necessary for you to bribe the women to do such, and if only a matter of a few hundred francs I will pay it, and, of course, the legal expenses." Longsdon's letter described the woman who was to make the sworn statement as "a prostitute all her life," a description not contained in Browne's letter. Watt returned to England in May, and without waiting for the sworn statement, on 12th May, Longsdon sent Browne's letter to Mrs. Watt. The plaintiff then instituted proceedings for libel in respect of the publication of Browne's letter to Singer; the publication of the same letter to Mrs. Watt; and Longsdon's letter of 5th May to Browne. Horridge, J., held that all three publications were privileged, and that there was no evidence of malice fit to be left to the jury, and entered judgment for the defendant. The plaintiff appealed.

The Court (SCRUTTON, GREER and RUSSELL, L.JJ.) ordered a new trial, holding (1) that the publication of Browne's letter to the plaintiff's wife was not privileged. There was no moral or social duty on the defendant to make the communication in this case to Mrs. Watt, such as to make the occasion privileged; (2) that the communications to Singer and to Browne were made on a privileged occasion; but (3) (Scrutton, L.J., dissenting on this point) that there was evidence of malice which ought to have been left to the jury.

Appeal allowed. New trial ordered.

COUNSEL: *T. J. O'Connor*, K.C., and *C. P. Harvey*; *Stuart Bevan*, K.C., and *Kenelm Preedy*.

SOLICITORS: *Smith, Rundell, Dods & Bockett*; *Church, Rendell, Bird & Co.*

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Alston *v.* **Alston.** Bateson, J. 15th July.

DIVORCE—WIFE'S PETITION FOR VARIATION OF SETTLEMENTS—COURT'S REGARD TO INTEREST OF GUILTY PARTY—ACCELERATION OF RESPONDENT'S POWER OF RESETTLEMENT ON ANY SUBSEQUENT MARRIAGE—INTEREST OF CHILDREN OF PETITIONER AND RESPONDENT.

This was a motion on behalf of a wife petitioner to confirm the report of the registrar on a petition for variation of settlements. Both spouses had made ante-nuptial settlements, but the question at issue concerned the application of settled funds of the guilty respondent husband which were of the value of about £80,000. There were two children of the marriage, daughters, born in 1914 and 1916 respectively. The ages of the petitioner and respondent were forty-one and forty respectively. The respondent took a life interest in his fund, which went to the petitioner for her life if she survived him, and on the death of the surviving spouse, to their children or remoter issue as the spouses jointly or as the survivor of them should appoint and subject thereto in trust for the children. There was also a power in the respondent if he survived the petitioner to appoint to any after-taken wife an interest for life or a lesser interest in the proportion of his fund thereinafter mentioned or in any less proportion, and to appoint the proportion thereinafter mentioned or any less proportion to the children or any remoter issue of any after-taken wife in such shares as he should appoint, but so that the total share of the trust fund so dealt with should not bear any greater proportion to the residue of the trust fund than the number of the children by any subsequent marriage or marriages should bear to the number of the children of the respondent and the petitioner who should attain a vested interest.

The registrar submitted in his report that the respondent's power to appoint to an after-taken wife and issue of a subsequent marriage should be limited to a power in respect of any wife taken after the death of the petitioner, and to the issue of such subsequent marriage. Counsel for the petitioner moved to confirm the registrar's report. Counsel for the respondent on a cross-motion asked for variation of the report (to which the petitioner agreed) in the following terms: That there should be an immediate irrevocable appointment by the petitioner and the respondent, subject to their life interests, of a moiety of the respondent's fund to the two children in equal shares, the respondent to have power to settle the remaining moiety at any time, subject only to his own life interest, by appointing a life interest or a lesser interest to any after-taken wife, and the corpus of the remaining moiety among children or remoter issue of any subsequent marriage. Counsel for the children, without consenting, left the matter to the decision of the court.

BATESON, J., said that he should make an order in the terms of the cross-motion. The powers conferred on the court by s. 192 of the Judicature (Consolidation) Act, 1925, were very wide and there was the principle laid down by Hill, J., in *Prinsep* v. *Prinsep* that the court must be fair to the wrong-doing party. Both spouses in the present case agreed to the scheme, provided that the interests of any children of the respondent by a subsequent marriage should become vested. On the whole, it seemed that out of a fund of £80,000, the appointment of £40,000, subject to the life interest of their father, was a very good proportion for these two young girls from a financial point of view. They might conceivably get nothing out of the settlements in the long run, though that contingency was not very likely, but at any rate they might get much less if they had more brothers and sisters to share it with if on the death of the mother the father married again.

COUNSEL: *J. V. Nesbitt* (*H. W. Barnard* with him), for the petitioner; *T. Bucknill*, for the children of the marriage of the petitioner and the respondent; *Bayford*, K.C. (*R. M. Middleton* with him) for the respondent.

SOLICITORS: *Halsey, Lightly & Hemsley; Lydall & Sons.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

In the Estate of Austin, deceased.

Swift, J. 19th July.

PROBATE—WILL PREPARED BY SOLICITOR DERIVING SUBSTANTIAL BENEFIT—UNUSUAL ATTESTATION CLAUSE—RIGHTEOUSNESS OF TRANSACTION—COSTS.

In this probate action the plaintiff, who was formerly a solicitor, having been struck off the Roll in 1928 for professional misconduct, propounded a will of the testatrix, Mary Ann Charlotte Austin, dated 10th December, 1912, under which he was an executor and residuary legatee. The testatrix died in January, 1929, aged eighty-one years. The defendants, who were cousins of the deceased, and interested on an intestacy, put the plaintiff to proof of due execution and further alleged want of knowledge and approval and undue influence, and challenged the plaintiff, who had himself prepared the will under which he received large benefits, to prove the righteousness of the transaction. The estate consisted of £417 in money and house property of the net value of £6,735, after deduction of mortgages. The plaintiff made the acquaintance of the testatrix in 1911 and the testatrix had received many kindnesses from the plaintiff's wife. In December, 1912, the testatrix gave the plaintiff instructions to prepare the will of 1912. As the plaintiff received substantial benefit under it, he arranged that it should be executed in the presence of another firm of solicitors. The attestation clause was in the following terms: "Signed and acknowledged by the testatrix as and for her last will in our presence, both being present at the same time and subscribed by us in her presence, and we both declare that before signing this will was read over to the testatrix separate and apart from any other person and she approved thereof and declared that she desired to sign it freely and voluntarily." Both attesting witnesses were dead. The will provided for legacies to certain persons and hospitals amounting to £1,350, which included a gift of £500 to the plaintiff in trust for distribution in his absolute discretion amongst members of the family of the defendants' father, the residue being left to the plaintiff.

SWIFT, J., in giving judgment, said that as the case stood, he (his Lordship) did not think that the deceased understood what she was doing with regard to her cousins' children. He made no finding of fraud or undue influence against the plaintiff. The circumstances in which the will was prepared and signed excited the greatest suspicion, to which the strange form of the attestation clause added. The plaintiff had not discharged the onus which was placed upon him. He (his Lordship) therefore pronounced against the portions of the will which contained references to the testatrix's cousins, the residuary clause, and the appointment of an executor. In result there would be an intestacy except with regard to the pecuniary legacies to three friends and to hospitals. Both sides would have their costs out of the estate.

COUNSEL: *Tyndale* and *H. Infield*, for the plaintiff; *Willis*, K.C., and *E. F. Ball*, for the defendants.

SOLICITORS: *William Gorringe & Co.; Sterns.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Rules and Orders.

THE COUNTY COURT DISTRICTS (MISCELLANEOUS NO. 2) ORDER, 1929. DATED 26TH JULY, 1929.

I, John Lord Sankey, Lord High Chancellor of Great Britain, by virtue of section 4 of the County Courts Act, 1888,(*a*) as amended by section 9 of the County Courts Act, 1924,(*b*) and of all other powers enabling me in this behalf, do hereby order as follows:—

1. The District of the County Court of Brecknockshire held at Crickhowell shall be consolidated with the District of the County Court of Monmouthshire held at Abergavenny and Blaenavon and the holding of the said Court held at Crickhowell shall be discontinued, and the said Court held at Abergavenny and Blaenavon shall be the Court for the District formed by the said consolidation, and shall have jurisdiction to deal with all proceedings which shall be pending in the said Court held at Crickhowell when this Order comes into operation.

2. The Parishes set out in the first column of the Schedule to this Order shall be detached from, and cease to form part of, the County Court Districts set opposite to their names respectively in the second column of the said Schedule, and shall be transferred to, and form part of, the County Court Districts set opposite to their names respectively in the third column thereof.

3. In this Order "Parish" shall have the same meaning as in the County Courts (Districts) Order in Council, 1899,(*c*) provided that the boundaries of every parish mentioned in this Order shall be those constituted and limited at the date of this Order.

4.—(1) This Order may be cited as the County Court Districts (Miscellaneous No. 2) Order, 1929, and the County Courts (Districts) Order in Council, 1899, as amended, shall have effect as further amended by this Order.

(2) Paragraphs 2 and 3 of this Order shall come into operation on the 1st day of October, 1929, and the remainder of this Order shall come into operation on the 12th day of August, 1929.

Dated the 26th day of July, 1929.

Sankey, C.

Schedule.

First Column. Parishes.	Second Column. County Court Districts.	Third Column. County Court Districts.
	Dorsetshire.	*Dorsetshire.*
Affpuddle.	Swanage.	Dorchester.
Moreton.	Swanage.	Dorchester.
Turners Puddle.	Swanage.	Dorchester.
Winfrith Newburgh.	Swanage.	Dorchester.
	Buckinghamshire.	*Buckinghamshire.*
Drayton Parslow.	Buckingham.	Bletchley and Leighton Buzzard.
Mursley.	Buckingham.	Bletchley and Leighton Buzzard.
Shenley Brook End.	Buckingham.	Bletchley and Leighton Buzzard.
Tattenhoe.	Buckingham.	Bletchley and Leighton Buzzard.
Whaddon.	Buckingham.	Bletchley and Leighton Buzzard.
	Northamptonshire.	*Bedfordshire.*
Astwood.	Northampton.	Bedford.
Hardmead.	Northampton.	Bedford.
	Radnorshire.	*Montgomeryshire.*
Llanbadarn Fynydd.	Knighton.	Newtown.
Llananno.	Knighton.	Newtown.
		Radnorshire.
Llanbister.	Knighton.	Llandrindod Wells.
Llanddewi-Ystradenny.	Knighton.	Llandrindod Wells.
	Buckinghamshire.	*Northamptonshire.*
Stoke Goldington.	Bletchley and Leighton Buzzard.	Northampton.
Hanslope.	Bletchley and Leighton Buzzard.	Northampton.

(*a*) 51-2 V. c. 43. (*b*) 14-5 G. 5. c. 17.
(*c*) S.R. & O. 1899, No. 178, printed as amended to 1903, S.R. & O. Rev., 1904 III. County Court, E., p. 1.

Legal Notes and News.

Wills and Bequests.

Mr. John Ingleby Jefferson, solicitor, of Northallerton, Yorks, deputy steward for the Manor of Northallerton and clerk to the old Court Lett and Halmote of Northallerton, left estate of the gross value of £9,110 with net personalty, £5,932.

THE LAW OF TRADE UNION FUNDS.

W. J. Russell, of Liverpool-street, King's Cross, was summoned at Bow-street Police Court recently for wilfully withholding £341 belonging to the National Union of Railwaymen, of which he was a branch secretary. The proceedings were taken under s. 12 of the Trade Union Act, 1871. Mr. Walter Frampton, prosecuting, said that Russell admitted withholding the money, and had offered to repay it at the rate of £1 a week. But the prosecution thought that that was more than he could afford, and they suggested 15s. a week. It was right that the money should be refunded, as some of it had been allocated to the widows' and orphans' fund. Russell told the magistrate (Mr. Graham Campbell) that his position was due to getting into the hands of moneylenders. At the request of the prosecution, the magistrate adjourned the summons *sine die*. "It is a very troublesome section of the Act," he commented.

SOLICITOR WINS.

The hearing was concluded on Wednesday 31st ult., before Mr. Justice Romer, in the Chancery Division, of the action by Mr. Arthur Walshaw, of Dodsworth-road, Barnsley, against Mr. Harold Butterley, solicitor, of Westgate, Barnsley. The action was for damages for losses caused by the defendant's alleged untrue statements whereby the plaintiff said he was induced to pay £500 for shares in the Barnsley Sports Club, Ltd., which was intended to run a greyhound and whippet racecourse at the Queen's Ground, Barnsley.

The allegations were denied.

His lordship said there were two other actions against Mr. Butterley, but as it would be hard on him to have a charge of fraud hanging over his head all through the Long Vacation, he would give judgment in this case now.

He would say that on the evidence he was satisfied there was no ground whatever for any charge of fraud against him, and the action would be dismissed.

SOLICITOR'S FAILURE.

SEQUEL TO A JUDGMENT OF THE HIGH COURT.

The first meeting of the creditors was held recently at the London Bankruptcy Court under the receiving order recently made against Mr. Peter David Thomas, described as a solicitor and company promoter, of Yardley, Bishop's-avenue, Finchley. The liabilities consisted chiefly of a claim of £86,667 presented by the liquidator of the Fenton Textile Association.

Mr. Thomas formerly practised in Leeds, and in 1913 came to London, where he continued to practise in partnership until 1926, when the partnership was dissolved. He had since been dependent on his earnings as a director of companies. He attributed his failure to the judgment obtained by the Association against him, although his personal honour was, in the action, completely vindicated and he was held liable only on technical grounds. He returned assets to the value of £50.

Mr. F. S. Salaman was appointed trustee of the estate.

It will be remembered that Mr. Justice Rowlatt, who tried the case, after a hearing extending over seventeen days, gave judgment in favour of the Association for £82,433 and costs. Against this Mr. Thomas appealed, but the Court of Appeal, in a reserved judgment, upheld the decision of the trial judge.

TALKING ON THE BENCH.

Mr. Justice Luxmoore, after swearing in Mr. Herbert Metcalfe, the new Metropolitan stipendiary magistrate, says the *Morning Post*, gave him a sound piece of advice: "Be sure and don't talk much while you are on the Bench."

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (7th February, 1929) 5½%. Next London Stock Exchange Settlement Thursday, 29th August, 1929.

	Middle Price 14th Aug.	Interest Yield.			Yield with Redemption.		
		£	s.	d.	£	s.	d.
English Government Securities.							
Consols 4% 1957 or after	82	4	17	7	—		
Consols 2½%	53½	4	13	6	—		
War Loan 5% 1929-47	100½	4	19	6	—		
War Loan 4½% 1925-45	95	4	14	9	4	19	0
War Loan 4% (Tax free) 1922-42	100¼	3	19	7	3	19	0
Funding 4% Loan 1960-1990	85	4	14	2	4	15	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	91½	4	7	5	4	9	9
Conversion 4½% Loan 1940-44	94	4	15	9	5	1	6
Conversion 3½% Loan 1961	74	4	14	7	—		
Local Loans 3% Stock 1912 or after	61½	4	17	7	—		
Bank Stock	245	4	18	0	—		
India 4½% 1950-55	87	5	3	6	5	9	6
India 3½%	66	5	6	1	—		
India 3%	57	5	5	3	—		
Sudan 4½% 1939-73	92	4	17	10	4	19	0
Sudan 4% 1974	84	4	15	3	4	17	6
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 15 years)	82	3	13	2	4	4	0
Colonial Securities.							
Canada 3% 1938	85	3	10	7	5	2	0
Cape of Good Hope 4% 1916-36	93	4	6	0	5	4	0
Cape of Good Hope 3½% 1929-49	79	4	8	7	5	4	0
Commonwealth of Australia 5% 1945-75	95	5	5	3	5	5	6
Gold Coast 4½% 1956	94	4	15	9	4	18	0
Jamaica 4½% 1941-71	94	4	15	9	4	17	0
Natal 4% 1937	93	4	6	0	5	4	0
New South Wales 4½% 1935-45	88	5	2	3	5	12	6
New South Wales 5% 1945-65	95	5	5	3	5	6	0
New Zealand 4½% 1945	93	4	16	9	5	3	0
New Zealand 5% 1946	99	5	1	0	5	2	0
Queensland 5% 1940-60	95	5	5	3	5	6	6
South Africa 5% 1945-75	99	5	1	0	5	1	0
South Australia 5% 1945-75	95	5	5	3	5	1	0
Tasmania 5% 1945-75	95	5	5	3	5	1	0
Victoria 5% 1945-75	95	5	5	3	5	1	0
West Australia 5% 1945-75	95	5	5	3	5	1	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	60	5	0	0	—		
Birmingham 5% 1946-56	101	4	19	0	4	18	6
Cardiff 5% 1945-65	100½	4	19	6	4	19	6
Croydon 3% 1940-60	69	4	6	11	4	18	6
Hull 3½% 1925-55	76	4	12	1	5	4	0
Liverpool 3½% Redeemable by agreement with holders or by purchase	70	5	0	0	—		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52	4	16	3	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	61½	4	17	7	—		
Manchester 3% on or after 1941	60	5	0	0	—		
Metropolitan Water Board 3% 'A' 1963-2003	62	4	16	9	—		
Metropolitan Water Board 3% 'B' 1934-2003	62	4	16	9	—		
Middlesex C. C. 3½% 1927-47	81	4	6	5	5	2	6
Newcastle 3½% Irredeemable	70	5	0	0	—		
Nottingham 3% Irredeemable	60	5	0	0	—		
Stockton 5% 1946-66	100	5	0	0	5	0	0
Wolverhampton 5% 1946-56	100	5	0	0	5	0	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	78½	5	1	11	—		
Gt. Western Rly. 5% Rent Charge	96	5	4	2	—		
Gt. Western Rly. 5% Preference	91½	5	9	3	—		
L. & N. E. Rly. 4% Debenture	74	5	8	1	—		
L. & N. E. Rly. 4% 1st Guaranteed	71	5	12	8	—		
L. & N. E. Rly. 4% 1st Preference	64	6	5	0	—		
L. Mid. & Scot. Rly. 4% Debenture	76½	5	4	7	—		
L. Mid. & Scot. Rly. 4% Guaranteed	75	5	6	8	—		
L. Mid. & Scot. Rly. 4% Preference	68	5	17	8	—		
Southern Railway 4% Debenture	76½	5	4	7	—		
Southern Railway 5% Guaranteed	97	5	3	0	—		
Southern Railway 5% Preference	85½	5	17	0	—		

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